

APPEAL NO. 020411  
FILED APRIL 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2002. The hearing officer determined that the evaluation and certification of an impairment rating (IR) by the designated doctor did not include all compensable body parts and was therefore not performed in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides); and that the evaluation and certification by the designated doctor is against the great weight of the other medical evidence. The hearing officer adopted the evaluation and certification by the doctor selected by the appellant (carrier) that the respondent (claimant) reached maximum medical improvement (MMI) on April 6, 2001, with a 6% IR. The carrier appealed, contending that there is insufficient legal or factual basis for the hearing officer to find the designated doctor's examination is not in accordance with the AMA Guides, and that the designated doctor's findings are against the great weight of other medical evidence. The file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that the claimant's treating doctor, Dr. M, certified that the claimant reached MMI on September 19, 2001, with a 6% IR; that the carrier-selected doctor, Dr. MC, certified that the claimant reached MMI on April 6, 2001, with a 6% IR; and that the Texas Workers' Compensation Commission's (Commission) designated doctor is Dr. AC. A narrative report dated May 16, 2001, reflects that Dr. AC certified that the claimant reached MMI on April 6, 2001, with a 2% IR. An MRI of the left knee dated August 18, 2000, reflects a small effusion and indicates no other significant abnormalities.

The hearing officer erred in determining that the claimant's IR is 6%. Section 408.125(c) provides that the IR report of the designated doctor chosen by the Commission shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The hearing officer determined that Dr. AC did not certify all compensable body parts and therefore misapplied the AMA Guides. We do not agree. Dr. AC's narrative report reflects that he evaluated both the left and right knee, specifically that "[d]uring evaluation of the ranges of motion of the right and left knee the [the claimant] exhibited overt voluntary restrictions and the ranges were inconsistent. No range of motion impairment was assessed." Dr. AC states that he agrees that the MRI of the left knee reflects a diagnosis of chondromalacia but that in the absence of objective findings, "the diagnosis of chondromalacia of the right knee cannot be considered." Furthermore, Dr. AC states that he observed that the claimant "[w]hen sitting on the edge of the examining table, [he] voluntarily exhibited full extension of both knees without effort or complaints." The Appeals Panel has held that a doctor's

failure to assign impairment for a particular condition does not necessarily mean an injury did not exist; rather, it may represent the doctor's opinion that the condition or problem is not permanent, an essential part of the definition of impairment. Texas Workers' Compensation Commission Appeal No. 941729, decided February 10, 1995. In the instant case, Dr. AC determined, after he evaluated both knees, that the "right knee has never been evaluated by any radiological or imaging modality" and thus an IR for the right knee was not assessed. The hearing officer commented that the

designated doctor failed to certify impairment for all compensable body parts, apparently due to the fact that he had neither an MRI or an Xray of the right knee. Rather than ordering an MRI or other testing, which [Dr. AC] certainly could have done, he simply refused to consider the diagnosed right knee condition.

However, Dr. AC's report opined that the claimant "does not require any further treatment or surgery." Also, a response to the Commission by Dr. AC dated July 30, 2001, states that the claimant "underwent a complete, full medical examination by me as required by the [Commission] and customary medical practice, and as recorded in my report." The evidence reflects that the designated doctor applied the AMA Guides properly in determining the claimant's IR. Dr. AC certified that the claimant reached MMI on April 6, 2001, with a 2% IR.

Accordingly, we reverse the hearing officer's decision that the claimant reached MMI on April 6, 2001, with a 6% IR and render a decision that the claimant reached MMI on April 6, 2001, with a 2% IR as certified by the designated doctor, Dr. AC.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge